

STATE OF MICHIGAN
COURT OF APPEALS

KENISA BARKAI,

Plaintiff-Appellee,

v

VHS OF MICHIGAN, INC., doing business as
DETROIT MEDICAL CENTER,

Defendant-Appellant.

JEFFREY EICHENLAUB, CATHERINE
GAUGHAN, SALAH HADWAN, ANTHONY
BONNETT, and MATTHEW MCLAUGHLIN,

Plaintiffs-Appellees,

v

VHS OF MICHIGAN, INC., doing business as
DETROIT MEDICAL CENTER, and TENET
HEALTHCARE, INC.,

Defendants-Appellants.

UNPUBLISHED
September 24, 2026
9:31 AM

No. 354587
Wayne Circuit Court
LC No. 20-005513-CD

No. 355607
Wayne Circuit Court
LC No. 20-007330-CD

ON REMAND

Before: LETICA, P.J., and M. J. KELLY and BAZZI, JJ.

PER CURIAM.

In our prior opinion in this consolidated employment action, we reversed the trial court’s orders denying summary disposition and to compel arbitration in favor of defendant, VHS of Michigan, Inc., doing business as Detroit Medical Center (DMC), in Docket No. 354587, and in favor of defendants DMC and Tenet Healthcare, Inc., in Docket No. 355607. Plaintiffs, all former

employees of DMC, filed an application for leave to appeal with our Supreme Court that was held in abeyance. Ultimately, in lieu of granting leave to appeal, the Supreme Court vacated our prior judgment and remanded the case to us for reconsideration in light of *Rayford v American House Roseville I, LLC*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 163989). See *Barkai v VHS of Mich, Inc*, ___ Mich ___, ___; 33 NW3d 206 (2026) (Docket Nos. 354587; 355607). Because the *Rayford* decision addressed the contractual shortening of limitations period, not arbitration agreements, we again reverse the trial court's orders denying defendants' motions for summary disposition and to compel arbitration and remand for entry of an order granting the motions and compelling arbitration.

I. FACTS AND PROCEDURAL HISTORY

In our prior opinion, we set forth the following facts:

These cases arise out of the terminations of plaintiffs, who were all employed at DMC's Sinai-Grace Hospital in Detroit, Michigan. At one time or another, each plaintiff agreed to the Fair Treatment Process (FTP). In June 2014, Tenet revised the FTP and required all then-employed employees to undergo a training on the updated FTP. As part of the training, the employees would acknowledge the terms of the FTP and agree to abide by those terms. Jeffrey Eichenlaub completed the training on June 17, 2014, and Catherine Gaughan completed the training on July 26, 2014. The employees hired after June 2014, as part of their pre-employment training, were asked to sign a document with two acknowledgements: an acknowledgement for receipt of the employee handbook and an acknowledgement for receipt and agreement to the FTP. Anthony Bonnett signed the document on June 16, 2016, Matthew McLaughlin signed on July 24, 2017, and Salah Hadwan signed on November 27, 2017.

Tenet again revised the FTP in January 2019 and DMC's employees were required to complete an electronic assignment that automatically opened the revised FTP. Completion of the assignment also required the employees to agree to the revised FTP. McLaughlin completed the assignment on January 24, 2019, Gaughan, on January 28, 2019, Eichenlaub, on January 31, 2019, Hadwan, on February 4, 2019, and Bonnett, on February 10, 2019. On August 16, 2019, Kenisa Barkai was offered a job at DMC. The offer of employment required Barkai to sign the FTP, which she did on September 9, 2019.

Several provisions of the FTP are relevant to this appeal. Regarding the FTP's applicability and coverage:

The FTP applies to all employees, regardless of length of service or status, and the agreement to arbitrate covers all disputes relating to or arising out of an employee's employment with the Company or the termination of employment. The only disputes or claims not covered by the FTP are those listed in the Exclusions section below. Examples of the type of disputes or claims covered by the FTP and the arbitration agreement include, but are not limited

to, claims for wrongful termination of employment, breach of contract, employment discrimination, harassment or retaliation under the Americans With Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 and its amendments or any state or local discrimination laws, tort claims or any other legal claims and causes of action recognized by local, state or federal law or regulations. This is a mutual agreement to arbitrate claims which means that both the employee and the Company are bound to use the FTP process as the only means of resolving employment-related disputes, and thereby agree to forego any right they each may have had to a jury trial on issues covered by the FTP. However, no remedies that otherwise would be available to either party in a court of law will be forfeited by virtue of their agreement to use and be bound by the FTP.

The FTP then describes the steps of the fair treatment process, with the first step being an internal review followed by final and binding arbitration. As mentioned in the applicability and coverage section, the FTP excludes certain issues from arbitration:

Workers' Compensation Claims, any claim involving the construction or application of a benefit plan covered by ERISA, and claims for unemployment benefits are excluded from the FTP. In addition, any non-waivable statutory claims, which may include claims within the jurisdiction of the National Labor Relations Board, wage claims within the jurisdiction of a local or state labor commissioner, or administrative agency charges before the Equal Employment Opportunity Commission or similar local or state agencies, are not subject to exclusive review under the FTP. This means that employees may file such non-waivable statutory claims with the appropriate agency that has jurisdiction over them if they wish, regardless of whether they decide to use the FTP to resolve them. However, if such agency completes its processing of an employee's claim and the employee decides to pursue further remedies on such claims in a civil action against the Company, the employee must use the FTP (although [the internal review] may be skipped). In addition, the FTP does not apply to employees covered by a collective bargaining agreement, unless otherwise agreed to by such employees.

Finally, the FTP contained a number of sections under the heading "Other Important Information," including:

Applicable Law and Procedural Rules: The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, will govern arbitrations under the FTP. The applicable Employment Arbitration Rules of the AAA

will govern the procedures to be used in such arbitrations, unless the parties have agreed otherwise.

* * *

At-Will Employment: Nothing in the FTP shall be construed to create a contract of employment, express or implied, nor does the FTP in any way alter the at-will nature of the employment relationship between the Company and its employees.

Modification to the FTP: The Company will not modify or change the agreement between the Company and its employees to use final and binding arbitration to resolve employment-related disputes, without notifying and obtaining the consent of employees to such changes. However, the Company may change or modify the FTP procedures from time-to-time without advance notice and without the consent of employees. To the extent permitted by applicable law, your consent to any such modifications will be implied by your continued employment after advance notice of any such modifications.

Bonnett, McLaughlin, Hadwan, and Barkai also signed acknowledgement documents that stated:

I acknowledge that I have reviewed the Fair Treatment Process above. Except to the extent that any applicable collective bargaining agreement provides otherwise, I hereby voluntarily agree to use the Fair Treatment Process and to submit to final and binding arbitration any and all claims and disputes that are related in any way to my employment or the termination of my employment with Tenet as set forth above. I understand that final and binding arbitration will be the sole and exclusive remedy for any such claims or disputes that I may have against Tenet or its parent, subsidiary or affiliated companies or entities, and each of its and/or their employees, officers, directors or agents, and, that to the extent permitted by law, I may not join any such claim or dispute with the dispute of another employee in a class, collective, representative or group action. Arbitration under the Fair Treatment Process is limited to individual disputes, claims or controversies that a court of law would be authorized or have jurisdiction over to grant relief, and by agreeing to the use of arbitration to resolve my dispute, both the Company and I agree to forego any right we each may have had to a jury trial on issues covered by the Fair Treatment Process. I also agree that such arbitration will be conducted before an experienced arbitrator chosen by me and the Company, and will be conducted under the Federal Arbitration Act and the procedural rules of the

American Arbitration Association (“AAA”) unless the Company and I agree otherwise.

I further acknowledge that in exchange for my agreement to arbitrate, the Company also agrees to submit all claims and disputes it may have with me to final and binding arbitration I further acknowledge that this mutual agreement to arbitrate may not be modified or rescinded except in writing by both me and the Company.

Plaintiffs were employed by DMC during the COVID-19 pandemic; Barkai, Eichenlaub, Hadwan, and Bonnett were nurses, Guaghan was a clinical coordinator, and McLaughlin was an emergency room technician. Each plaintiff had a conversation with managers at DMC and expressed their concerns over the hospital’s lack of personal protective equipment (PPE) and the patients’ conditions.

On March 17, 2020, Barkai “posted a 7-second video on social media showing herself wearing PPE, including a mask, face shield, and gloves while stating ‘I have my gloves, my hair covering, my mask, my gown and I’m read[y] to rock and roll. I’m going in.’ ” The next day, Barkai was interviewed for the local news and reiterated her concerns about patient and staff safety caused by the shortage of PPE. On March 27, 2020, DMC terminated Barkai’s employment for violating its social-media policy.

On April 14, 2020, a national news agency published a story with two pictures depicting dead bodies in body bags “piled on top of each other” A corporate officer for Tenet met with the remaining plaintiffs about the origin of the photographs. Each plaintiff denied taking the photographs or sending them to the news agency, but DMC terminated their employment.

In Docket No. 354587, Barkai filed a complaint against DMC alleging retaliation in violation of The Whistleblowers’ Protection Act (WPA), MCL 15.369 *et seq.*, and wrongful discharge in violation of public policy. In Docket No. 355607, Eichenlaub, Gaughan, Hadwan, Bonnett, and McLaughlin filed a complaint alleging retaliation in violation of the WPA against DMC, wrongful discharge in violation of public policy against DMC, intentional or reckless infliction of emotional distress against DMC, and conspiracy to intentionally or recklessly inflict emotional distress against DMC and Tenet. In both cases, defendants filed a motion for summary disposition under MCR 2.116(C)(7), arguing that the cases should be dismissed because the FTP that each plaintiff had agreed to contained an arbitration agreement. Plaintiffs denied that there was a valid arbitration agreement and argued that even if the FTP had a valid arbitration agreement, the text of the FTP did not require claims under the WPA to be arbitrated.

In both cases, the trial court denied defendants’ motions for summary disposition. In Docket No. 354587, the trial court “disagree[d] that mandatory arbitration must be compelled.” In Docket No. 355607, the trial court determined

that the “employee handbook does not constitute a binding agreement to arbitrate these claims.” This appeal followed. [*Barkai v VHS of Mich, Inc*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2021 (Docket Nos. 354587; 355607), pp 1-5 (footnotes omitted).].

We concluded that plaintiffs’ claims were covered within the broad scope of the FTP’s arbitration provisions, reversed the trial court’s denial of defendants’ motions for summary disposition and remanded for entry of orders compelling arbitration. *Id.* at pp 7-13. On plaintiffs’ application for leave to appeal, our Supreme Court ultimately vacated our prior judgment and remanded the case to us for reconsideration in light of *Rayford*. See *Barkai*, ___ Mich at ___.

II. RAYFORD

We conclude that the application of *Rayford* does not alter our judgment that the trial court erred in denying defendants’ motions for summary disposition.

In *Rayford*, the plaintiff, a certified nursing assistant, was hired by the defendant, a nursing care facility, in February 2017. After being employed for about one week, the plaintiff signed an acknowledgment that any claim or lawsuit arising from her employment must be filed within 180-days of the employment action. Within a few months of her employment, the plaintiff purportedly learned of inappropriate behavior between the defendant’s upper management and some employees, resulting in preferential treatment. She claimed to report this impropriety to the defendant’s human resources division and the state of Michigan. The plaintiff further alleged that the defendant retaliated against her for the report, including causing her to be criminally charged with filing a false report about another matter she had reported; however, the criminal charge was ultimately dismissed. In April 2020, the plaintiff filed suit alleging violations of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, wrongful discharge in violation of public policy, malicious prosecution, and abuse of process. After the defendant moved for summary disposition premised on the 180-day limitations period in the employment acknowledgment, the plaintiff asserted that the acknowledgment was unenforceable as an unconscionable adhesion contract. The trial court granted summary disposition in light of the clear and unambiguous language of the contractual acknowledgment, requiring that suit be filed within six months, and this Court affirmed. *Rayford*, ___ Mich at ___, slip op at 2-5.

The *Rayford* Court applied the definition of an adhesion contract as “[a] standard-form contract prepared by one party, to be signed by another party in a weaker position, usu. a consumer, who must essentially either accede (adhere) to the terms or not have a contract at all.” *Id.* at ___, slip at 18, 34 (quotation marks and citation omitted). Contracts in which the employee occupies a weaker position than the employer deserve “close judicial scrutiny.” *Id.* at ___, slip op at 34. To ascertain whether a shortened limitations period is reasonable, one must examine whether “(1) the claimant has sufficient opportunity to investigate and file an action, (2) the time is not so short as to work a practical abrogation of the right of action, and (3) the action is not barred before the loss or damage can be ascertained.” *Id.* (quotation marks and citations omitted). Further, when a party to a contract has little to no bargaining power, it may be deemed unconscionable, both procedurally and substantively. *Id.* at ___, slip op at 37-39. When the record lacks development “to determine the reasonableness of the shortened limitations period and whether the provision was unconscionable,” a remand to the trial court is appropriate. *Id.* at ___, slip op at 33.

In our consolidated case, the issue presented did not involve the reasonableness of a shortened limitations period, but rather the application of an arbitration provision. This Court recently addressed the application of *Rayford* in *Johnson v Best Buy Co, Inc (On Remand)*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 363807), slip op at 3, order directing oral argument on application for leave to appeal ___ Mich ___, 33 NW3d 669 (2026). This Court acknowledged that the facts and holding of *Rayford* had not been applied specifically to arbitration provisions. But, on remand, the *Johnson* Court also recognized that principles relating to adhesion and form contracts could nonetheless result in a reasonable agreement. *Johnson*, ___ Mich App at ___; slip op at 3-4. The *Johnson* panel concluded that public policy supported alternative resolution and the language of an arbitration clause was reasonable when it applied to both parties, adopted standard arbitration association rules, and addressed specific claims raised by any party. Furthermore, this same criteria shows that an arbitration provision is not unconscionable. *Id.* at ___; slip op at 3-7. Similar to *Johnson*, our consolidated case involved standard arbitration rules, applied to all parties, and addressed the provision language to determine the claims included, indicating it remained enforceable. As already noted, on May 1, 2026, our Supreme Court considered the application for leave to appeal in *Johnson* and directed its Clerk to schedule oral argument on the application to address whether the adhesion contract analysis of *Rayford* was applicable to the enforcement of the arbitration policy at issue and whether federal arbitration law preempted the application of *Rayford* in light of the facts of the case. *Johnson*, 33 NW3d at 669. We are bound by this Court’s published decision in *Johnson*. MCR 7.215(J)(1). Accordingly, we again reverse the trial court’s orders denying defendants’ motion for summary disposition and to compel arbitration and remand for entry of an order compelling arbitration.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michael J. Kelly
/s/ Mariam S. Bazzi